HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

25

27/10/07

मामला क्रमांक Cr.A.No.1185 **सन् 2002**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT:
(In Jail)

Jivan Satnami, S/o Dhanau Satnami, aged 28 years, R/o Datan, P.S. Kasdol, District Raipur (CG)

-Versus-

RESPONDENT:

State of Chhattisgarh, Through P.S. Kasdol, District Raipur (CG).

(Criminal Appeal under Section 374 (2) of the Cr.P.C.)

Division Bench: -

Hon'ble Shri L.C. Bhadoo &

Hon'ble Shri Sunil Kumar Sinha, JJ.

25-10-2007:-

Shri Rewa Shankar Patel, counsel for the appellant.

Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 29-8-2002 passed by the 2nd Additional Sessions Judge, Baloda Bazar, in S.T No.494/2001 whereby and whereunder learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing the murder of Hemchand, sentenced him to undergo imprisonment for life & to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 6 months.

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आदेश पत्रक (पूर्वानुबद्ध)

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Case of the prosecution, in brief, is that Bahoor Singh Miri gave Dehati Nalishi Ex.P/4 in the Police Station Kasdol on 11-7-2001 to the effect that today at about 2 p.m. Jivan Lal was at his residence. He was sitting at the tailoring shop of one Shiv Kumar. At that time, accused Jivan Lal opened the door of his house. He was holding sword in his hand. His clothes were stained with blood. He threw the body of Hemchand out of his house & he was saying that he has committed the murder of Hemchand with a sword. For some time the accused was roaming in the village holding sword in his hand. After some time he ran away. Thereafter Bhoklu father of Hemchand said that Hemchand entered the house of Jivan. He asked Jivan to send Hemchand out of his house but he did not send Hemchand out of his house and committed his murder. He also gave Dehati merg intimation Ex.P/5, based on that the police recorded merg intimation Ex.P/6, on the basis of which first information report Ex.P/3 was registered.

The investigating officer left for scene of occurrence, after giving notice Ex.P/1 to the Panchas prepared inquest Ex.P/2 on the body of Hemchand. While in the police custody, the accused gave memorandum Ex.P/8, in pursuance of that he got recovered one tumbler stained with blood under Ex.P/9. One sword and white colour shirt were seized form the accused under Ex.P/10. Site plan Ex.P/12 was prepared by the I.O. Clothes of Hemchand sent by the PHC were seized under Ex.P/13. Blood stained and plain soil was seized from the place of occurrence under Ex.P/15. Seized articles were sent to Forensic Science Laboratory, Raipur under Ex.P/16 from where report Ex.P/21 was received. The body of Hemchand was sent for postmortem examination to the Primary Health

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आदेश पत्रक (पूर्वानुबद्ध)

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Centre, Kasdol where Dr. Y.K. Sharma (PW-16) conducted the postmortem. He opined that cause of death is syncope due to excessive haemorrhage. Death was homicidal in nature. He prepared postmortem report Ex.P/17. Weapon of offence sword and tumbler were sent to the doctor for examination under Ex.P/18-A, the doctor after examination of tumbler and sword gave opinion under Ex.P/18.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Raipur, who in turn committed the case to the Sessions Judge, Raipur from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 17 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. in which he denied material appearing against him in the prosecution evidence. In the last, he stated that he is innocent and has been falsely implicated in the crime. On the fateful day when he returned to his house he saw that door of the house was closed. On his call his wife opened the door. He saw that Hemchand (since deceased) was sitting on the cot. He enquired from him as to why he is sitting there, then he said that he is hungry, therefore, he gave him food. After the food was consumed by Hemchand, he asked him to go but he said that he will complete the work for which he has come. He made his wife to lie on the cot. In front of him he removed Sari of his wife, therefore, he could not tolerate, thereafter what he did he cannot tell. He examined his wife Smt. Teej Bai in his defence but she has not supported the version of the accused.

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आदेश पत्रक (पूर्वानुबद्ध)

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Learned Additional Sessions Judge after hearing learned counsel for the respective parties convicted and sentenced the accused as aforesaid.

We have heard Shri Rewa Shankar Patel, counsel for the appellant and Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Shri Patel has not disputed homicidal death of Hemchand. Moreover, Dr. Y.K. Sharma (PW-16) has stated that on 12-7-2001 he was working as Assistant Surgeon in the Government Hospital, Kasdol. On that day he conducted autopsy on the body of the deceased. There were 3 lacerated wounds, 8 incised wounds and one penetrating wound. Frontal bone of the head was broken. Membrane was ruptured. Clotted blood was present in the brain. Upper part of the left lung was cut. Clotted blood was present in the wind pipe. Membrane of sternum was cut. Sando baniyan of blue colour which was found on the body of the deceased was smeared with blood and mud. Cause of death was syncope and haemorrhage. Death was homicidal in nature. His report is Ex.P/17. In view of the above medical evidence, it is established that death of Hemchand was homicidal in nature.

As far as complicity of the accused in the crime in question is concerned, in this case there is no ocular or direct evidence. The whole case rests on the circumstantial evidence. As per the settled law in order to convict an accused based on the circumstantial evidence, the Hon'ble Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220** held that:

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"In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

In the present case, the prosecution has tried to establish the crime against the accused based on the following circumstance:-

- That deceased Hemchand was in the house of accused Jivan; accused Jivan was seen throwing the dead body of Hemchand on the road from his house; the accused was seen holding sword and clothes were stained with blood at the time of the incident.

Even though sword has been said to be recovered from the accused under Ex.P/10, but the prosecution has utterly failed to prove that

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आदेश पत्रक (पूर्वानुबद्ध)

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because in the first instance, there is no memorandum regarding recovery of the place from where the accused produced sword. Moreover, Manharan Lal Shrivas (PW-7) in whose presence sword is said to have been recovered has turned hostile and he has not supported the prosecution case. On the contrary, he has stated that he saw the accused in the Police Station and sword was lying on the table. The police obtained his signatures on the papers saying that they are recovering this sword. Therefore, in view of the above, recovery of the sword has become doubtful.

PW-1 Khorbahra, brother of the deceased, has stated that on the fateful day in the afternoon he heard commotion in the village that Jivan has kept Hemchand in his house, therefore, he along with Nathuva went to the house of Jivan. His father Bhoklu followed them. They requested Jivan not to quarrel, but even then Jivan did not release Hemchand, at that time there was rain. Even though this witness has stated that he saw the accused along with Ghanaram attacking the deceased but this is improvement and same cannot be believed.

PW-2 Sukhiram has stated that on the fateful day at about 1-2 p.m. he returned after ploughing his agricultural field. After consuming meal he was standing in front of his house. He saw that Jivan Lal threw the body of Hemchand on the road from his house. Thereafter he started roaming here and there holding sword in his hand. Seeing this he entered his house.

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आदेश पत्रक (पूर्वानुबद्ध)

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PW-3 Bhoklu, father of the deceased, has stated that his house is at a distance of 100 ft. from the house of the accused. The accused had captivated his son Hemchand in his house. He along with Nathuva and Khorbahra went in front of the house of Jivan. He asked Jivan as to what injustice has been done to him by Hemchand? Then Jivan replied from inside of the house that they are eating and drinking. He requested him to open the door, thereafter he went to village Kotwar, but Kotwar was not available at his house. When he returned, he saw that Jivan, Banshlal and Ghanaram were attacking the deceased. This part is again improvement. He has further stated that they threw the body of Hemchand in front of the house of Jivan. On question by the Court, he again stated that his son Hemchand was in the house of Jivan. On enquiry, Hemchand said that they are eating and drinking. He did not open the door.

PW-4 Santosh Kumar has also stated that on the fateful day when he returned after taking bath he saw that door of the house of Jivan was opened. Clothes of Jivan were stained with blood. Jivan was holding sword in his hand. Jivan was tying the leg of Hemchand with towel. Seeing this he became frightened and entered his house. Virendra Kumar Rai (PW-6) has turned hostile. In cross-examination of these witnesses, defence has not been able to discredit their evidence to the extent that Hemchand was in the house of Jivan, even on their request Jivan did not open the door, thereafter PW-2 Sukhiram saw that the accused was throwing the body of Hemchand in front of the house on road from his house. He also saw that he was holding sword in his hand. This circumstance is corroborated by the statement of the accused himself,

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who has stated that when he returned from the field, door of the house was closed, on his call his wife opened the door, then he saw that Hemchand was sitting on the cot. He enquired from him, then he said that he is hungry, therefore, food was provided to him, thereafter he asked him to go, then he said that he will complete the work for which he has come, thereafter he started removing sari of his wife which could not be tolerated by him and he attacked him. Therefore, presence of Hemchand in the house of the accused has been admitted by the accused himself. PW-2 Sukhiram has deposed that he saw that the accused was throwing the dead body of the deceased out of his house on the road, even sword was seen by this witness in the hand of the accused, even his sando baniyan was stained with blood. Therefore, above circumstances establishes the fact that the accused was author of the crime in question, as body was thrown by the accused, which has been admitted by him & he has not stated that anybody else assaulted the deceased. On the contrary, he has stated that when the deceased was removing sari of his wife, he could not tolerate that and he cannot tell whatever has been done by him. Therefore, from the above circumstantial evidence, only irresistible conclusion can be drawn that the accused was author of the crime in question. There is no possibility of anybody else committing the crime in question.

Learned counsel for the accused/appellant argued that the act of the deceased could not be tolerated by the accused, therefore, in a fit of anger, when the deceased was removing sari of his wife, the accused attacked the deceased. Therefore, offence against the accused does not travel beyond Section 304 Part-II of the IPC.

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	But, this argument of learned counsel for the accused/appellant is devoid of merit. There is nothing on record which suggests that in fact, Hemchand tried to commit rape or outrage modesty of the wife of the accused. In the first instance, this defence has not been put to the prosecution witnesses or to the investigating officer. On the contrary, the father of the deceased has stated that they requested the accused to open the door. He has further stated that what injustice has been done by the deceased with the accused, even then door was not opened. Apart from that, in order to establish that the deceased tried to outrage the modesty or commit rape on the wife of the accused, the accused examined his wife Teej Bai (DW-1), but unfortunately she has also not supported the accused. She has stated that one year back there was nobody in the house. She had gone to the field. Hemchand has no relation with her. In para-4 she has categorically stated that Hemchand had not committed any act on her or compelled her to do anything. Therefore, defence of the accused that in fact, he committed the crime when the deceased was trying to outrage the modesty or commit rape on his wife, is not tenable.] For the foregoing reasons, we are of the considered opinion that the appeal being devoid of merit is liable to be dismissed and it is hereby dismissed. Sd/- L.C. Bhadoo Judge	Sd/- Sunil Kumar Sinha Judge
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